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104TH CONGRESS
*2d Session*
HOUSE OF REPRESENTATIVES
REPT. 104–818
Part 1

# MEDICARE AND MEDICAID WAIVER FOR NURSE AIDE TRAINING PROGRAMS IN CERTAIN FACILITIES

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SEPTEMBER 23, 1996.—Ordered to be printed

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Mr. BLILEY, from the Committee on Commerce, submitted the following

## REPORT

[To accompany H.R. 3633]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3633) to amend title XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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## PURPOSE AND SUMMARY

H.R. 3633 amends Title XVIII and Title XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain facilities. This measure permits a State to waive the current prohibition if

the State: (1) determines that there is no other such program offered within a reasonable distance of the facility; (2) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility; and (3) provides notice of such determination to the State long-term care ombudsman.

## Background and Need for Legislation

Under existing Federal law, a nursing facility may lose its ability to offer facility-based nurse aide training and competency evaluation programs for reasons that are unrelated to the quality of the program itself. This unintended consequence of current law arises from instances where some form of operational deficiency may exist, even though such deficiency is unrelated to the nurse aide training and evaluation programs and is being or has been corrected. As a result, nursing facilities, particularly those in rural communities, are prevented from conducting the training and evaluation that is integral to the provision of quality nursing care and the prevention of a staffing void.

This measure would revise current law to permit the continuation of nurse aide training and competency evaluation programs in affected facilities under certain circumstances. In order for a facility to continue its training and evaluation programs, the State in which it is located would have to make a determination that no similar program is in existence within a reasonable distance of the facility, conduct oversight activities to ensure that an adequate environment exists for operating the program in the facility, and provide notice of such determination to the State long-term care ombudsman. The Committee and the Administration agree that these training programs should continue under certain circumstances.

## Hearings

The Committee on Commerce has not held hearings on the legislation.

## Committee Consideration

On September 18, 1996, the Committee on Commerce met in open markup session and ordered H.R. 3633, a bill to amend Titles XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities, reported to the House, without amendment, by a voice vote, a quorum being present.

## Rollcall Votes

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 3633 reported. A motion by Mr. Bliley to order H.R. 3633 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

## COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

## COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

## NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R 3633 would result in no new or increased budget authority or tax expenditures or revenues.

## COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

## CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 18, 1996.*

Hon. THOMAS J. BLILEY,
*Chairman, Committee on Commerce,*
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 3633, a bill to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities, as ordered reported on September 18, 1996. Pay-as-you-go procedures would apply because the bill could affect direct spending.

The Omnibus Budget Reconciliation Act of 1989 included a number of provisions that required nursing facilities to conduct nurse aide training and competency evaluation programs. However, the Secretary could not approve such programs at nursing facilities under certain conditions. In rural areas where there are no nearby training programs, the bill would allow the Secretary to waive some of the restrictions so that a training program could be conducted at a nursing facility as long as the program would not be conducted by the nursing facility. CBO estimates that this provision would have no budgetary impact.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995

(Public Law 104–4) and would impose no costs on state, local, or tribal governments.

If you wish for further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robin Rudowitz.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

## INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 3633 would have no inflationary impact.

## ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act are created by this legislation.

## SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

### SECTION 1. PERMITTING WAIVER OF PROHIBITION OF OFFERING NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS IN CERTAIN FACILITIES

Section 1 of the bill amends section 1819(f)(2) and section 1919(f)(2) of the Social Security Act to authorize a waiver of the prohibition of offering ÷nurse aide training and competency evaluation programs in certain facilities upon State determination that no similar program is in existence within a reasonable distance of the facility, an adequate environment exists for operating the program in the facility, and the State long-term care ombudsman has been notified of the above.

## CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic, existing law in which no change is proposed is shown in roman):

# SOCIAL SECURITY ACT

* * * * * * *

## TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

* * * * * * *

### PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

#### REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

SEC. 1819. (a) * * *

* * * * * * *

(f) RESPONSIBILITIES OF SECRETARY RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—

(1) * * *

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

(A) * * *

(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

(i) * * *

* * * * * * *

(iii) *subject to subparagraph (C),* shall prohibit approval of such a program—

(I) offered by or in a skilled nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii)(II);

(b) has been subject to an extended (or partial extended) survey under subsection (g)(2)(B)(i) or section 1919(g)(2)(B)(i), unless the survey shows that the facility is in compliance with the requirements of subsections (b), (c), and (d) of this section; or

(c) has been assessed a civil money penalty described in subsection (h)(2)(B)(ii) or section 1919(h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in clause (i) or (iii) of subsection (h)(2)(B), subsection (h)(4), section 1919(h)(1)(B)(i), or in clause (i), (iii), or (iv) of section 1919(h)(2)(A), or

(II) offered by or in a skilled nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in skilled nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the skilled nursing facility.

*(C) WAIVER AUTHORIZED.—Clause (iii) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility in a State if the State—*

*(i) determines that there is no other such program offered within a reasonable distance of the facility,*

*(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and*

*(iii) provides notice of such determination and assurances to the State long-term care ombudsman.*

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TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

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REQUIREMENTS FOR NURSING FACILITIES

SEC. 1919. (a) * * *

* * * * * * *

(f) RESPONSIBILITIES OF SECRETARY RELATING TO NURSING FACILITY REQUIREMENTS.—

(1) * * *

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

(A) * * *

(B) APPROVAL OF CERTAIN PROGRAMS.—Such requirements—

(i) * * *

* * * * * * *

(iii) *subject to subparagraph (C),* shall prohibit approval of such a program—

(I) offered by or in a nursing facility which, within the previous 2 years—

(a) has operated under a waiver under subsection (b)(4)(C)(ii) that was granted on the basis of a demonstration that the facility is unable to provide the nursing care required under subsection (b)(4)(C)(i) for a period in excess of 48 hours during a week;

(b) has been subject to an extended (or partial extended) survey under section 1819(g)(2)(B)(i) or subsection (g)(2)(B)(i); or

(c) has been assessed a civil money penalty described in section 1819(h)(2)(B)(ii) or subsection (h)(2)(A)(ii) of not less than $5,000, or has been subject to a remedy described in subsection (h)(1)(B)(i), clauses (i), (iii), or (iv) of subsection (h)(2)(A), clauses (i) or (iii) of section 1819(h)(2)(B), or section 1819(h)(4), or

(II) offered by or in a nursing facility unless the State makes the determination, upon an individual's completion of the program, that the individual is competent to provide nursing and nursing-related services in nursing facilities.

A State may not delegate (through subcontract or otherwise) its responsibility under clause (iii)(II) to the nursing facility.

*(C) WAIVER AUTHORIZED.—Clause (iii) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility in a State if the State—*

*(i) determines that there is no other such program offered within a reasonable distance of the facility,*

*(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and*

*(iii) provides notice of such determination and assurances to the State long-term care ombudsman.*

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